

 **COPY**

LPA PROGRAM AGREEMENT

High Risk Rural Road Advance Railroad Warning Signs Project

DODGE COUNTY, NEBRASKA
STATE OF NEBRASKA, DEPARTMENT OF ROADS
PROJECT NO. HRRR-STWD(116)
STATE CONTROL NO. 00868
ADVANCED RAILROAD SIGNING

Exhibit Item # 27.f.
Date 11-23-16

THIS AGREEMENT, is between Dodge County, Nebraska, a local public agency ("LPA"), and the State of Nebraska, Department of Roads, ("State"), and collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the State's High Risk Rural Road Implementation Team selected this statewide or local safety project for funding with Federal-aid funds; this project is identified as Project No. HRRR-STWD(116), and

WHEREAS, the project is for the purchase and, when set out herein, the installation of advance railroad warning signs specified below, and

WHEREAS, LPA wishes to participate in the selected Federal-aid project, as evidenced by the attached Resolution of the LPA, identified as Exhibit "A" and made a part of this agreement, and

WHEREAS, Federal-aid funds will be used in this project; therefore, all Federal-aid fund program requirements will apply, and

WHEREAS, this agreement sets out the duties and responsibilities of the "Parties", and

WHEREAS, the Federal share payable on this project will be a maximum of 100 percent of the eligible and participating costs; the LPA's share will be the remaining 0 percent of the eligible and participating costs; and LPA will also be responsible for all other nonparticipating or ineligible costs,

NOW THEREFORE, in consideration of these facts, the parties hereto agree as follows:

SECTION 1. DESCRIPTION OF PROJECT

This project is for the purchase of the following described advanced railroad warning signs and posts: (number of sign packages):

Advance Railroad Warning Sign Packages – 10 ea.

The advance railroad warning signs shall be installed at the locations identified on the site listings, attached hereto as Exhibit "B" and hereby made a part of this agreement.

SECTION 2. LPA RESPONSIBILITIES

Project Number: HRRR-STWD(116)
Control Number: 0868

Agreement No. BM1652

A. Receipt and Installation Requirements

LPA shall ensure that all advance railroad warning signs:

- 1) have been received and are in good condition
- 2) conform to the requirements of the Manual on Uniform Traffic Control Devices (MUTCD) that is current at the time the advance railroad warning signs are received by LPA
- 3) will be installed at the locations set out on Exhibit "B" by **December 31, 2017**
- 4) were installed in accordance with MUTCD

B. Service Providers

(This section is intentionally left blank).

C. Contract Letting

(This section is intentionally left blank)

D. Contractor Oversight

(This section is intentionally left blank.)

E. Certificate of Completion

LPA shall submit a Certificate of Completion within 45 days of project completion to the State verifying that LPA has met the Receipt and Installation requirements of Section 2A.

F. Maintenance

Upon project completion, the LPA shall, at its own cost, protect and maintain the advance railroad warning signs are in proper condition and in working order. In the event the advance warning signs are lost, stolen, damaged or destroyed, LPA shall be responsible for replacing or repairing of the signs at LPA's own cost.

G. Financial

The total project cost is currently estimated to be \$1,251.78, the federal share is estimated to be \$1,251.78, and the LPA's share is estimated to be \$0, but such costs may increase or decrease due to variations between the estimated and actual Program costs.

H. Documentation

The LPA shall maintain all correspondence, documents, accounting records and other evidence pertaining to costs incurred and shall make such material available at its office at all reasonable times during the contract period and for three (3) years from the date of project close out; such records shall be available for inspection by the State and the FHWA or any authorized representatives of the Federal government, and copies thereof shall be furnished by the LPA if requested.

I. Federal-aid Requirements

The LPA agrees to comply with Federal-aid project requirements applicable to projects of this type including, but not limited to, 23 C.F.R., 49 C.F.R., and the LPA Guidelines Manual for Federal-aid Projects, in order for this transportation project to be eligible for Federal funding.

I. Indemnity

The LPA agrees to hold harmless, indemnify, and defend the State and FHWA against all liability, loss, damage, or expense, including reasonable attorney's fees and expert fees, that the State and/or FHWA may suffer as a result of claims, demands, costs, or judgments arising out of LPA's project and the terms of this agreement.

J. Federal-aid Requirements

The LPA agrees to comply with Federal-aid project requirements applicable to projects of this type including, but not limited to, 23 C.F.R., 49 C.F.R., and the LPA Guidelines Manual for Federal-aid Projects, in order for this transportation project to be eligible for Federal funding.

SECTION 3. STATE RESPONSIBILITIES

The State, when necessary, shall be responsible for:

- 1) Developing plans and technical requirements for the purchase, fabrication, construction and installation of the advance railroad warning sign(s).
- 2) Ordering the advance railroad warning signs.
- 3) Providing for delivery of advance railroad warning signs to the location(s) designated by the LPA.
- 4) Conducting a letting, when a letting is needed for this project.
- 5) Assisting LPA in resolving issues of funding eligibility.
- 6) Paying the eligible and participating costs directly to LPA's service provider(s) for projects involving consultant or contractor services.
- 7) Invoicing LPA for their share of the project costs.

SECTION 4. SUSPENSION OR TERMINATION

A. Suspension

The State, in its sole discretion, reserves the right to suspend both (1) State's work on this project and (2) LPA's right to incur any additional reimbursable costs on the project when the State determines that there are issues related to project performance, responsiveness, quality or eligibility that must be corrected by LPA. The State shall provide

LPA with notice of the suspension including a description of the reason(s) for the suspension, a timeframe for LPA to correct the deficiencies, and when applicable, a description of the actions that must be taken for the State to revoke the suspension.

A suspension may also be imposed by the State for any of the reasons listed in the Termination subsection below, or for any significant change in the scope of the project that has not been previously approved by the State or FHWA.

Failure to correct the deficiencies identified in a suspension will be grounds for the loss of eligibility for federal funding for the project and for termination of this agreement.

B. Termination

This agreement may be terminated for the following reasons:

1. The State and the LPA, by mutual written agreement, may terminate the agreement at any time.
2. The State may terminate this agreement for the following reasons:
 - a. A decrease or shift in available federal-aid funding that will, in the sole discretion of the State, make it unlikely or not feasible for the project to be prioritized to receive federal-aid funding.
 - b. LPA's violation of or failure to meet the requirements for Federal-aid local projects found in federal, state, or local law or policy, or the LPA Guidelines Manual.
 - c. A notice or declaration of FHWA or the State that any part of the project is or has become ineligible for federal funding.
 - d. LPA's failure to sign any State drafted or approved project agreement including supplemental agreements, or certification.
 - e. LPA's failure to pay in full the local share specified in any agreement within 30 days after receipt of an invoice from the State.
 - f. LPA's breach of a provision of this agreement.
 - g. LPA's failure to cause the project to be constructed according to the approved project plans and specifications.
3. The LPA may terminate the agreement upon thirty (30) days written notice of termination to the State, subject to the LPA meeting the conditions of paragraphs 5 and 6 below.

4. Prior to the State terminating this agreement, the State shall provide written notice to the LPA of the basis for termination and, when applicable, provide the LPA thirty (30) days to properly resolve all issues identified by the State.
5. Whenever the project is terminated for any reason, LPA shall (a) repay the State all Federal-aid funds that have been expended for the project and (b) pay State for all of State's costs associated with the project. Further, the LPA will thereafter be solely responsible for all costs associated with LPA's project.
6. LPA may not terminate this agreement after the State has placed an order to procure the advanced railroad warning signs, notwithstanding paragraphs 3 and 4 above.

SECTION 5. LAWFUL PRESENCE IN USA AND WORK ELIGIBILITY STATUS PROVISIONS

The LPA agrees to comply with the requirements of Neb.Rev.Stat. §4-108 to 4-114 with its Federal-aid project, including, but not limited to, the requirements of §4-114(1)(b)) to place in any contract it enters into with a public contractor a provision requiring the public contractor to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska.

SECTION 6. FAIR EMPLOYMENT PRACTICES ACT

The LPA agrees to abide by the provisions of the Nebraska Fair Employment Practice Act as provided by Nebraska Revised Statute, Section 48-1101 through 48-1126 (Reissue 1988), and all regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49 CFR, Parts 21 and 27 are hereby made a part of and included in this agreement by reference.

SECTION 7. GENERAL COMPLIANCE WITH LAWS

The LPA hereby agrees to comply with all federal, state, and local laws and ordinances applicable to the work in effect at the time of the work.

SECTION 8. DRUG-FREE WORKPLACE POLICY

The LPA shall have an acceptable and current drug-free workplace policy on file with the State.

SECTION 9. DISABILITIES ACT

The LPA agrees to comply with the Americans with Disabilities Act of 1990 (P.L. 101-366), as implemented by 28 CFR 35, which is hereby made a part of and included in this agreement by reference.

SECTION 10. NON-DISCRIMINATION

- A. Compliance with Regulations: During the performance of this agreement, the LPA, for itself and its assignees and successors in interest, agrees to comply with the regulations of the DOT relative to nondiscrimination in federally-assisted programs of the DOT (49 CFR 21 and 27, hereinafter referred to as the Regulations), which are hereby made a part of and included in this agreement by reference.
- B. Nondiscrimination: The LPA, with regard to the work performed by it after award and prior to completion of this agreement, shall not discriminate on the basis of race, color, sex, or national origin in the selection and retention of Subcontractors, including procurements of materials and leases of equipment. The LPA shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR 21.5, including employment practices when the agreement covers a program set forth in Appendixes A, B, and C of 49 CFR 21.
- C. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a subcontract, including procurements of materials or equipment, each potential Subcontractors or supplier shall be notified by the LPA of the LPA's obligations under this agreement and the Regulations relative to nondiscrimination on the basis of race, color, sex, or national origin.
- D. Information and Reports: The LPA shall provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the LPA, State or FHWA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of an LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA shall certify to the LPA, State or FHWA, as appropriate, and set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the LPA's noncompliance with the nondiscrimination provisions of this agreement, the LPA will impose such agreement sanctions as it or the State and FHWA may determine to be appropriate, including but not limited to withholding of payments to the LPA under this agreement until the LPA complies, and/or cancellation, termination, or suspension of this agreement, in whole or in part.
- F. Incorporation of Provisions: The LPA shall include the provisions of paragraphs A through E of this section in every subcontract, including procurements of materials and leases of

equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The LPA shall take such action with respect to any subcontract or procurement as the LPA, State or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided however, that in the event a LPA becomes involved in or is threatened with litigation with a Subcontractor as a result of such direction, the LPA may request that the LPA enter into such litigation to protect the interests of the LPA and, in addition, the LPA may request that the State and United States enter into such litigation to protect the interests of the State and United States.

SECTION 11. ENTIRE AGREEMENT

This instrument embodies the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than contained herein, and this contract supersedes all previous communications, representations, or other contracts or contracts, either oral or written hereto.

IN WITNESS WHEREOF, the Parties hereby execute this agreement pursuant to lawful authority as of the dates below indicated.

EXECUTED by the LPA this _____ day of _____, 2016.
DODGE COUNTY

Chair, Dodge County Board of Supervisors

Subscribed and sworn to before me this _____ day of _____, 2016.

Notary Public

EXECUTED by the STATE this _____ day of _____, 2016.

STATE OF NEBRASKA
DEPARTMENT OF ROADS
Mick Syslo, P.E.

Materials & Research Division Engineer

County	pkgs	site	Pymnt Site	Intersecting Road 1	Intersecting Road 2	Location	Section #	Range & Township
Dodge	1	1		Cloverly Rd		Fremont SE	25	T17N,R8E
Dodge	2	2		Cloverly Rd		Fremont South	26	T17N,R8E
Dodge	1	3		Ridge Rd		Fremont West	21-22	T17N,R8E
Dodge	2	4		CoRd19		Fremont West	17	T17N,R8E
Dodge	2	5		CoRd18		Fremont West	13-14	T17N,R7E
Dodge	2	6		CoRd F		Hooper North	28-33	T19N,R8E
ttl				10				

RESOLUTION

SIGNING OF THE HRRR PROJECT PROGRAM AGREEMENT – BL1652

Dodge County

Resolution No. _____

Whereas: Dodge County is proposing a transportation project for which it would like to obtain Federal funds;

Whereas: Dodge County understands that it must strictly follow all Federal, State and local laws, rules, regulations, policies and guidelines applicable to the funding of the Federal-aid project; and

Whereas: Dodge County and Nebraska Department of Roads (NDOR) wish to enter into a new Project Program Agreement setting out the various duties and funding responsibilities for the Federal-aid project.

Be It Resolved: by the Board of Supervisors of Dodge County that:

Chair of the Dodge County Board of Supervisors is hereby authorized to sign the attached Project Program Agreement between the Dodge County and the NDOR.

Dodge County is committed to providing local funds for the project as required by the Project Program Agreement.

NDOR Project Number: **HRRR-STWD(116)**

NDOR Control Number: **00868**

NDOR Project Name: **Advance Railroad Warning Signs**

Adopted this _____ day of _____, 2016 at _____ Nebraska.
(Month) (Year)

The Board of Supervisors of Dodge County

Board/Council Member _____

Moved the adoption of said resolution

Member _____ Seconded the Motion

Roll Call: _____ Yes _____ No _____ Abstained _____ Absent

Resolution adopted, signed and billed as adopted

Attest:

Signature County Clerk